Challenges of NEPA Compliance for Joint Programs

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SUPERIOR **TECHNOLOGY** FOR A SUPERIOR **ARMY**

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TARDEC
U.S. ARMY TANK-AUTOMOTIVE RESEARCH DEVELOPMENT AND ENGINEERING CENTER

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Background

- Work for Tank Automotive Research Development and Engineering Center (TARDEC)
- Provide Environmental Support to Program Executive Officer Combat Support & Combat Service Support (PEO CS&CSS) Programs
  - Tactical Vehicles
  - Combat Systems
  - Construction Equipment
  - Petroleum and Water Systems

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Overview

- NEPA Regulations

- Similarities

- Differences

- Problems

- Current Guidance

- Scenarios

- Conclusion

- 42 U.S.C. 4321

- Establishes policy for protection of the environment

- Establishes the Council on Environmental Quality

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CEQ Regulations

- 40 CFR 1500-1508 *Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA*
  - Provides general requirements for compliance
  - Requires systematic, interdisciplinary environmental analysis prior to taking Federal action
  - Required each agency to develop their own implementing procedures for NEPA

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Agency NEPA Regulations

- **Army**—32 CFR 651 *Environmental Analysis of Army Actions*

- **Air Force**—32 CFR 989 *Environmental Impact Analysis Process (EIAP)*

- **Navy**—32 CFR 775 *Procedures for Implementing the National Environmental Policy Act*
  - SECNAV INSTRUCTION 5090.6A *Environmental Planning for Department of Navy Actions*

- **USMC**--MCO P5090.2A *Environmental Compliance and Protection Manual,* 10 July 1998 (being updated)
  - In addition to Navy Regulations

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DoDI 5000.02

- *"The PM shall conduct and document NEPA/E.O. 12114 analyses for which the PM is the action proponent. The PM shall provide system-specific analyses and data to support other organizations' NEPA and E.O. 12114 analyses."*

- Overall Intent

- Analysis up front and early

- Inform Decision Makers of impacts

- General Definitions of EIS, EA, and CATEX

- EIS process is very similar

- Require that Alternatives be addressed

- Public should be involved

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- **Categorical Exclusion (CATEX)**—*Categories of actions that normally do not require an EA or an EIS because it has been determined that they do not individually or cumulatively have a substantial effect on the human environment*

- **Environmental Assessment (EA)**—*When a proposed action does not clearly require an EIS but is not categorically excluded, an EA is prepared providing sufficient evidence and analysis for determining whether to prepare an EIS. An EA results in a Finding of No Significant Impact (FONSI), a decision to prepare an EIS, or no action on the proposal.*

- **Environmental Impact Statement (EIS)**—*Used when an action clearly has significant impacts or when an EA cannot be concluded with a FONSI*

- **Record of Environmental Consideration (REC)—***A signed statement submitted with project documentation that briefly documents that an action has received environmental review (Army Only)*
  - Used to document certain CATEXs
  - To document that an action has been evaluated and has been sufficiently addressed by another EA or EIS and that further evaluation is not needed
    - Note: AF has a CATEX similar to this use of a REC
- **Programmatic NEPA Document—***EA or EIS used to examine impacts of actions that are similar in nature or broad in scope and allow for "tiering" of future NEPA documents*

What are Some of the Differences?

- **When to use particular document types**
  - EA vs. EIS vs. CATEX
- **Level of Detail in Regulations related to the Use of EAs**
  - Army's regulation is very detailed on what to include and when to use an EA
    - Frequently used for weapon system acquisition programs
  - AF regulation provides sufficient detail on content of EA but not to the extent that the Army's does
  - Navy regulation does not define content of an EA except in very general terms
- **Use of Programmatic Documents**
  - Army tends to use Programmatic EAs for weapon system acquisition programs
    - Cover general system related impacts
    - Installations are responsible for site-specific NEPA
  - Navy regulation mentions the use of a Programmatic EIS but not a PEA
  - AF regulation does not mention the use of programmatic documents

- ## Lists of CATEXs are significantly different
  - ### Examples:
    - Testing of weapon systems as long as it is similar to past actions that had no significant impact
      - Navy has a CATEX for this
      - Army & AF do not
    - Training w/ weapon systems as long as it is similar to past actions that had no significant impact
      - Navy has a CATEX for this
      - Army & AF do not
    - Decommissioning/Disposal of military equipment as long as it is IAW applicable regulations
      - Navy has a CATEX for this
      - Army & AF do not

- Army's use of a REC
  - Other agencies do not define this type of document
  - Other agencies' CATEX documentation is similar to Army's REC
- Timeframes for public involvement
- Funding Requirements for Acquisition related NEPA documentation
  - Army regulation
    - PM will fund NEPA documentation related to generic vehicle programmatic environmental assessment (PEA)
    - Receiving installations are responsible for Site-specific NEPA documentation including funding

So, What's the Problem?

- Who's regulation to follow?
  - Lead agency?
  - A combination?
  - Most stringent?
- If following lead agency policy/regulation for acquisition related NEPA documentation, how should participating agencies address NEPA documentation for their receiving installations?
- Use of CATEXs for testing and training

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Current Guidance for Joint Programs

- **40 CFR 1501.5**
  - Lead agency shall supervise the preparation of an EIS if more than one Federal agency is involved in the same action

- **DoDI 5000.02 states….**
  - *"The CAE (or for joint programs, the CAE of the Lead Executive Component) or designee, is the approval authority for system-related NEPA and E.O. 12114 documentation."*

- *"Follow the Lead Agency's Policy….."*

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- USMC is the lead agency of Joint program with the Army
  - USMC regulation allows for use of CATEX for testing of the vehicles
  - Testing is being done at Army test site and Army does not have the same CATEX
  - Does the Army test site fall under the USMC CATEX since USMC is the lead agency?
  - From past experience, Army Test Site still prepares a REC based off of their existing EIS and does not use the CATEX
    - However, there could be a situation when an event has not already been covered by the test site's EIS

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Scenario 2

- Army is the lead agency for a new truck program with the USMC participating
  - Army regulation would lead to the preparation of a Programmatic Environmental Assessment (PEA) funded by the PM
  - Army regulation requires that site-specific NEPA documentation be prepared and funded by the receiving installations
  - When preparing an EA, the USMC typically addresses the site-specific NEPA analysis as a part of the document or as appendices to the PEA
  - In this situation, who is responsible for preparing site specific NEPA documentation for USMC installations?

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- If instead the USMC were the lead agency for this new truck program…

- USMC/Navy Regulations may lead to the use of CATEXs rather than a PEA

- Army does not have a similar CATEXs for testing and training

- Since USMC is lead do we then not prepare an PEA even though Army regulation would require one?

  - Also, Army typically provides PEA to installations in support of site-specific NEPA documentation. What would be required?

- If the USMC did decide to prepare a PEA, would they cover all Army installations in a PEA?

- USMC is the lead agency for an urgent Joint Program involving all services
  – Testing is being done at Army sites
  – Training is being done at USMC, Navy, AF, and Army sites
  – USMC and Navy use CATEXs for training; Army does not have a CATEX for this; AF relies on installations for training NEPA documentation
  – No Programmatic document has been prepared to assess the overall impacts of the program
    - Army regulation would lead to the development of a PEA but they are not the lead agency

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Conclusion

- The number of Joint Programs is growing (MRAP, JLTV, JAB, ABV, JSF, JHSV, etc.)

- "Follow the lead Agency"…is not enough

- Better NEPA guidance is needed
  - Joint Regulation?
  - Joint guidance document?

Questions?

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